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AMENDMENTS TO LB 373

(Amendments to Standing Committee amendments, AM0573)

1 1. Strike the original sections and insert the following
2 new sections:

3 "Section 1. Whenever an agency proposes to adopt, amend,
4 or repeal a rule or regulation, (1) at least thirty days before the
5 public hearing, when notice of a proposed rule or regulation is
6 sent out, or (2) at the same time the agency applies to the
7 Governor for a waiver of the notice of public hearing under section
8 84-907, the agency shall provide to the Governor for review (a) a
9 description of the proposed rule or regulation and the entity or
10 entities it will impact, (b) an explanation of the necessity of the
11 proposed rule or regulation, including the identification of the
12 authorizing statute or legislative bill, (c) a statement that the
13 proposed rule or regulation is consistent with legislative intent,
14 (d) a statement indicating whether the proposed rule or regulation
15 is the result of a state mandate on a local governmental
16 subdivision and if the mandate is funded, (e) a statement
17 indicating if the proposed rule or regulation is the result of a
18 federal mandate on state government or on a local governmental
19 subdivision and if the mandate is funded, (f) a description,
20 including an estimated quantification, of the fiscal impact on
21 state agencies, political subdivisions, and regulated persons, (g)
22 a statement that the agency will solicit public comment on the
23 proposed rule or regulation before the public hearing, and (h) a

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1 statement indicating whether or not the agency has utilized the
2 negotiated rulemaking process as provided for in the Negotiated
3 Rulemaking Act with respect to the proposed rule or regulation.

4 Sec. 2. Section 84-906, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 84-906. (1) No rule or regulation of any agency shall be
7 valid as against any person until five days after such rule or
8 regulation has been filed with the Secretary of State. No rule or
9 regulation required under the Administrative Procedure Act to be
10 filed with the Secretary of State shall remain valid as against any
11 person until the certified copy of the rule or regulation has been
12 so filed on the date designated and in the form prescribed by the
13 Secretary of State. The filing of any rule or regulation shall
14 give rise to a rebuttable presumption that it was duly and legally
15 adopted.

16 (2) A rule or regulation adopted after August 1, 1994,
17 shall be invalid unless adopted in substantial compliance with the
18 provisions of the act, except that inadvertent failure to mail a
19 notice of the proposed rule or regulation to any person shall not
20 invalidate a rule or regulation.

21 (3) Any action to contest the validity of a rule or
22 regulation on the grounds of its noncompliance with any provision
23 of the act shall be commenced within four years after the effective
24 date of the rule or regulation.

25 (4) The changes made to the act by Laws 1994, LB 446,
26 shall not affect the validity or effectiveness of a rule or
27 regulation adopted prior to August 1, 1994, or noticed for hearing

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1 prior to such date.

2 (5) The changes made to the act by Laws 2005, LB 373,
3 shall not affect the validity of effectiveness of a rule or
4 regulation adopted prior to October 1, 2005, or noticed for hearing
5 prior to such date.

6 Sec. 3. Section 84-906.01, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 84-906.01. (1) An agency shall maintain an official
9 rulemaking or regulationmaking record for each rule or regulation
10 it adopts or proposes by publication of a notice. The record and
11 materials incorporated by reference shall be available for public
12 inspection and shall be maintained for at least four years after
13 the effective date of the rule or regulation.

14 (2) The record shall contain:

15 (a) Copies of all publications with respect to the rule
16 or regulation;

17 (b) Copies of any portions of the public rulemaking or
18 regulationmaking docket containing entries relating to the rule or
19 regulation;

20 (c) All written petitions, requests, submissions, and
21 comments received by the agency and all other written materials
22 prepared by or for the agency in connection with the proposal or
23 adoption of the rule or regulation;

24 (d) Any official transcript of oral presentations made in
25 a proceeding about the proposed rule or regulation or, if not
26 transcribed, any tape recording or stenographic record of those
27 presentations, and any memorandum prepared by the hearing officer

1 summarizing the contents of those presentations;

2 (e) A copy of the rule or regulation and the concise
3 explanatory statement filed with the Secretary of State;

4 (f) All petitions for adoption of, exceptions to,
5 amendments of, or repeal or suspension of, the rule or regulation;

6 (g) A copy of any comments on the rule or regulation
7 filed by a legislative committee; and

8 (h) A description, ~~but not necessarily a~~ including an
9 estimated quantification, of the fiscal impact on state agencies,
10 political subdivisions, and regulated persons.

11 (3) Upon judicial review, the record required by this
12 section shall constitute the official agency rulemaking or
13 regulationmaking record with respect to a rule or regulation.
14 Except as provided in section 84-907.04 or as otherwise required by
15 law, the agency rulemaking or regulationmaking record need not
16 constitute the exclusive basis for agency action on that rule or
17 regulation or for judicial review thereof.

18 Sec. 4. Section 84-907, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 84-907. No rule or regulation shall be adopted, amended,
21 or repealed by any agency except after public hearing on the
22 question of adopting, amending, or repealing such rule or
23 regulation. Notice of such hearing shall be given at least thirty
24 days prior thereto to the Secretary of State and by publication in
25 a newspaper having general circulation in the state. All such
26 hearings shall be open to the public. In addition to the
27 requirements of section 84-906.01, draft copies or working copies

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1 of all rules and regulations to be adopted, amended, or repealed by
2 any agency shall be available to the public in the office of the
3 Secretary of State at the time of giving notice. The notice shall
4 include: (1) A declaration of availability of such draft or work
5 copies for public examination; (2) a short explanation of the
6 purpose of the proposed rule or regulation or the reason for the
7 amendment or repeal of the rule or regulation; and (3) a
8 description, including an estimated but not necessarily a
9 quantification, of the fiscal impact on state agencies, political
10 subdivisions, and persons being regulated or an explanation of
11 where the description of the fiscal impact may be inspected and
12 obtained. No person may challenge the validity of any rule or
13 regulation, the adoption, amendment, or repeal of any rule or
14 regulation, or any determination of the applicability of any rule
15 or regulation on the basis of the explanation or description
16 provided pursuant to ~~subdivision~~ subdivisions (2) and (3) of this
17 section. Any agency adopting, amending, or repealing a rule or
18 regulation may make written application to the Governor who may,
19 upon receipt of a written showing of good cause, waive the notice
20 of public hearing.

21 For purposes of this section, good cause shall include,
22 but not be limited to, a showing by the agency that:

23 (a) Compliance with the public notice requirements of
24 this section would result in extreme hardship on the citizens of
25 this state;

26 (b) An emergency exists which must be remedied
27 immediately; or

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1 (c) A timely filing or publication of notice of a public
2 hearing was prevented by some unforeseeable event beyond the
3 immediate control of the agency and that the parties affected have
4 not and will not suffer material injury as a result of the agency's
5 action.

6 Whenever public notice is waived, the agency shall, so
7 far as practicable, give notice to the public of the proposed rule
8 or regulation change and of the rule or regulation as finally
9 adopted or changed.

10 Sec. 5. Section 84-907.06, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 84-907.06. Whenever an agency proposes to adopt, amend,
13 or repeal a rule or regulation, (1) at least thirty days before the
14 public hearing, when notice of a proposed rule or regulation is
15 sent out, or (2) at the same time the agency applies to the
16 Governor for a waiver of the notice of public hearing, the agency
17 shall send to the Executive Board of the Legislative Council (a) a
18 copy of the hearing notice required by section 84-907, (b) if
19 applicable, a draft copy of the rule or regulation, and (c) ~~if not~~
20 ~~included in the hearing notice, a description but not necessarily a~~
21 ~~quantification of the fiscal impact on state agencies, political~~
22 ~~subdivisions, and persons being regulated~~ the information provided
23 to the Governor pursuant to section 1 of this act.

24 Sec. 6. Section 84-907.07, Reissue Revised Statutes of
25 Nebraska, is amended to read:

26 84-907.07. The chairperson of the Executive Board of the
27 Legislative Council or committee staff member of the board shall

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1 refer materials received pursuant to section 84-907.06 for review
2 (1) to the chairperson of the standing committee of the Legislature
3 which has subject matter jurisdiction over the issue involved in
4 the rule or regulation or which has traditionally handled the issue
5 and (2) if practicable, to the member of the Legislature who was
6 the primary sponsor of the legislative bill that granted the agency
7 the rulemaking authority if the member is still serving or, if the
8 legislative bill was amended to include the rulemaking authority,
9 to the primary sponsor of the amendment granting rulemaking
10 authority if the member is still serving. The committee or
11 committee chairperson of such standing committee of the Legislature
12 having subject matter jurisdiction may submit a written or oral
13 statement at the public hearing on the rule or regulation or, if
14 the Governor authorizes a waiver of the notice of public hearing,
15 may submit a written statement to the agency and to the Secretary
16 of State to be entered in the records relating to the rule or
17 regulation.

18 Sec. 7. (1) After an agency submits a copy of each
19 amendment or rule or regulation pursuant to section 84-907.06, or
20 any time thereafter, any member of the Legislature who feels
21 aggrieved by the amendment, rule, or regulation or believes that
22 the amendment, rule, or regulation is in excess of the statutory
23 authority or jurisdiction of the agency, is unconstitutional, or is
24 inconsistent with the legislative intent of the authorizing statute
25 may file a complaint with the Chairperson of the Executive Board of
26 the Legislative Council. The complaint shall explain in detail the
27 member's contentions.

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1 (2) The chairperson of the executive board or a committee
2 staff member of the executive board shall refer the complaint to
3 the chairperson of the standing committee of the Legislature which
4 has subject matter jurisdiction over the issue involved in the rule
5 or regulation or which has traditionally handled the issue and, if
6 practicable, to the member of the Legislature who was the primary
7 sponsor of the legislative bill that granted the agency the
8 rulemaking authority if the member is still serving or, if the
9 legislative bill was amended to include the rulemaking authority,
10 to the primary sponsor of the amendment granting rulemaking
11 authority if the member is still serving.

12 (3) The standing committee and primary sponsor of the
13 legislative bill or amendment granting rulemaking authority may
14 consider the complaint and, if such committee or primary sponsor
15 concludes that the complaint has merit, then such committee or
16 primary sponsor may request a written response from the agency
17 which shall include, but not be limited to (a) a description of the
18 amendment or rule or regulation, (b) when applicable, a description
19 of the legislative intent of the statute granting the agency
20 rulemaking authority and a statement explaining how the amendment
21 or rule or regulation is consistent with legislative intent, (c) if
22 the description required in subdivision (b) of this subsection is
23 inapplicable, an explanation as to why the amendment or rule or
24 regulation is necessary, and (d) an explanation of the extent to
25 which and how any public comment was taken into consideration by
26 the agency with respect to the amendment or rule or regulation.
27 The agency shall respond within sixty days of a request, and such

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1 response shall be a public record.

2 (4) Nothing in this section shall be construed to
3 prohibit the adoption or promulgation of the rule or regulation in
4 accordance with other sections of the Administrative Procedure Act.

5 Sec. 8. Section 84-920, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 84-920. Sections 84-901 to 84-920 and sections 1 and 7
8 of this act shall be known and may be cited as the Administrative
9 Procedure Act.

10 Sec. 9. Original sections 84-906, 84-906.01, 84-907,
11 84-907.06, 84-907.07, and 84-920, Reissue Revised Statutes of
12 Nebraska, are repealed."